

Exhibit 5 –
Atsa koodakuh wyh Nuwu/People of Red Mountain's
June 24
Correspondence to BLM, Winnemucca

June 24, 2021

Ms. Ester McCullough, District Manager
Mr. Ken Loda, Project Manager
Bureau of Land Management
Winnemucca District Office
5100 East Winnemucca Blvd.
Winnemucca, NV 89445

Ms. McCullough and Mr. Loda:

We, the undersigned members of the Fort McDermitt Paiute and Shoshone Tribe, through counsel, assert that the organization Atsa koodakuh wyh Nuwu (the People of Red Mountain), an unincorporated association formed by the undersigned, is an appropriate party to be consulted with under the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and the 2014 BLM-Nevada State Historic Preservation Officer State Protocol Agreement (PA) as the Bureau of Land Management, Winnemucca District Office (BLM) considers mitigation of adverse effects to historic properties in Peehee mu'huh (Thacker Pass). We also write to inform BLM of the religious, cultural, and historical significance of Peehee mu'huh. This religious, cultural, and historical significance qualifies Peehee mu'huh for classification in both the "Conservation For Future Use" and "Traditional Use" categories described in BLM Manual 8110. Finally, we assert that BLM has so far failed to adequately consult with other tribes and must do so before any physical disturbance happens in Peehee mu'huh.

I. Atsa koodakuh wyh Nuwu is an appropriate party for consultation about adverse effects to properties of religious and cultural significance in Peehee mu'huh under NHPA, NEPA, the 2014 BLM-SHPO PA, and federal case law.

Atsa koodakuh wyh Nuwu was formed to raise awareness about the religious, cultural, and historical importance of Peehee mu'huh. All of the members of Atsa koodakuh wyh Nuwu practice the traditional spirituality our ancestors practiced for thousands of years. Several of our members are traditional cultural and religious leaders with extensive training in the ceremonies of our people. We maintain our oral histories and hold our people's traditional knowledges. Just like generations of our ancestors before us, we camp, hike, perform ceremony, pray, hunt, and gather our traditional medicines in Peehee mu'huh. We plan to do so for the rest of our lives. For the elders in Atsa koodakuh wyh Nuwu, Paiute is the first language and we still prefer to speak Paiute over English.

Atsa koodakuh wyh Nuwu is an appropriate party for consultation about the adverse effects to properties of religious and cultural significance in Peehee mu'huh described in the Thacker Pass Lithium Mine Project Final Environmental Impact Statement (FEIS) as both members of the general public and through the guidelines for Native American

participation described in Sections A and B, respectively, of the BLM-SHPO Protocol Agreement Preamble. We assume that a Cultural Resource Inventory Needs Assessment (CRINA) has been completed, though the public record is devoid of this documentation. BLM is directed to invite, if appropriate, those who request to participate as consulting parties after completion of the CRINA, to participate in the process of determining the actions to be undertaken to avoid, minimize, or mitigate those adverse effects (PA Preamble, Section A).

BLM must seek and consider the views of the general public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties (PA Preamble, Section A). Native American participation is guided by 36 CFR § 800.2(c)(2)(ii)(A-F), the provisions of BLM Manual 8120 and the latest edition of any associated Handbook, as well as any policy guidance issued by BLM that supplements the Manual (PA Preamble, Section B).

Reasonable treatments for those effects can only be determined in consultation with the people who value the property (SHPO Protocol Agreement, Section V.C.3). 36 CFR § 800.2(c)(5) explains that “[c]ertain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties.” BLM Handbook 1780-1, “Improving and Sustaining BLM-Tribal Relations” lists “traditional cultural or religious leaders” as Indian parties for consultation (Chapter III.C.2).

Furthermore, federal courts have found that an individual Native American who avers that he or she has personally visited sites of traditional cultural significance in the project area and will do so in the future have standing under both constitutional and prudential requirements. See, for example, *Montana Wilderness Ass’n v. Frye*, 310 F Supp2d 1127, 1150-51 (D Mont 2004).

Atsa koodakuh wyh Nuwu deeply values Peehee mu’huh as a sacred site and for Peehee mu’huh’s singular cultural and historic importance to our people. We are deeply concerned with the Thacker Pass Lithium Mine’s effects would have on Peehee mu’huh. Because we depend on Peehee mu’huh for food and medicine as described below, we also have a unique economic relation to Peehee mu’huh. As explained above, Atsa koodakuh wyh Nuwu members are traditional cultural and religious leaders.

II. BLM must allocate Peehee mu’huh to the “Conservation for Future Use” and “Traditional Use” categories described in BLM Manual 8110 and provide Peehee mu’huh long-term preservation.

Field Office managers shall allocate to appropriate use categories all cultural properties known and projected to occur in a plan area and a cultural property may be allocated to more than one use category (BLM Manual 8110.41(A)). Allocations shall be reevaluated and revised, as appropriate, when circumstances change or new data become available (8110.41(B)). The “Conservation for Future Use” category is reserved for, among other

characteristics, any unusual cultural property which, because of singular historic importance or cultural importance is not currently available for consideration as the subject of scientific or historical study that would result in its physical alteration (8110.42(B)). A cultural property included in this category is deemed worthy of segregation from all other land or resource uses, including cultural resource uses, that would result in its physical alteration (Id.). Long-term preservation is required for properties that fall into this category (BLM Manual 8110, Table 8110-1).

The “Traditional Use” category is to be applied to any cultural resource known to be perceived by a specified social and/or cultural group as important in maintaining the cultural identity, heritage, or well-being of the group (8110.42 (C)). Cultural properties assigned to this category are to be managed in ways that recognize the importance ascribed to them and seek to accommodate their continuing traditional use (Id.). Long-term preservation is desirable for properties that fall into this category (Table 8110-1).

Peehee mu’huh is an unusual cultural property with singular historic and cultural importance that should not be physically altered, especially by the absolute physical alteration Lithium Nevada’s massive open pit lithium mine would achieve. Our oral histories tell us that Peehee mu’huh was the site of a terrible massacre of our people. In fact, this history is in the original name of the site itself. Peehee mu’huh was named so because our ancestors were massacred there while our hunters were away. When the hunters returned, they found their loved ones murdered, unburied, rotting, and with their entrails spread across the sage brush in a part of the Pass shaped like a moon. Peehee mu’huh translates in English to “rotten moon.”

To build a lithium mine over Peehee mu’huh, where our ancestors were massacred, where our ancestors’ bones, blood, and flesh form a part of the soil, would be like building a lithium mine over Pearl Harbor, Arlington National Cemetery, or the Gettysburg Battlefield.

Peehee mu’huh is not just central to our identity as a people, it is central to our existence as a people. The Fort McDermitt tribe might not exist if it wasn’t for the shelter provided by Peehee mu’huh. When American soldiers were rounding our ancestors up at the point of a gun to force them onto reservations, our people hid in Peehee mu’huh. There are many caves and stone outcroppings in Peehee mu’huh where our ancestors could watch the surrounding land for miles. When our ancestors saw dust stirred by approaching cavalry patrols, they fled up the Montana Mountains above Peehee mu’huh and into the caves. The Fort McDermitt tribe descends from essentially two families who, hiding in Peehee mu’huh, managed to avoid being sent to reservations farther away from our ancestral lands. We will forever be grateful to Peehee mu’huh for the shelter she provided for us.

We also believe that some of our ancestors are buried in Peehee mu’huh. Peehee mu’huh contains dozens of caves, stone outcroppings, and similar geologic features. Traditionally, our people often used caves, stone outcroppings, and similar geologic features to bury our dead in. Peehee mu’huh was traditionally used as a major route

from the Quinn River Valley to the King's River Valley and beyond. This fact, combined with the number of cultural resources (over 1000) and historic properties (58) that BLM's field inventories have identified, makes it so we can almost guarantee that our ancestors' human remains are in Peehee mu'huh.

Peehee mu'huh is essential to the survival of our traditions. Our traditions are tied to the land. When our land is destroyed, our traditions are destroyed. Peehee mu'huh is home to many of our traditional foods. Some of our last choke cherry orchards are found in Peehee mu'huh. We gather choke cherries to make choke cherry pudding, one of our oldest breakfast foods. Peehee mu'huh is also a rich source of yapa, wild potatoes. We hunt groundhogs, rabbits, and mule deer in Peehee mu'huh. Mule deer are especially important to us as a source of meat, but we also use every part of the deer for things like clothing and for drumskins in our most sacred ceremonies.

Peehee mu'huh is one of the last places where we can find our traditional medicines. We gather ibi, a chalky rock that we use for ulcers and both internal and external bleeding, there. COVID-19 made Peehee mu'huh even more important for gathering our medicines. Last summer and fall, when the pandemic was at its worst on the reservation, we went to Peehee mu'huh for toza root, which is known as one of the world's best anti-viral medicines. We also gathered good, old-growth sage brush to make our strong Indian tea, which we use for respiratory illnesses, there.

III. Many tribes beyond the Fort McDermitt Paiute-Shoshone Tribe attach religious and cultural significance to Peehee mu'huh and must be engaged in meaningful, government-to-government consultation before Peehee mu'huh is physically disturbed.

The Preamble to the BLM-SHPO 2014 State Protocol Agreement obligates BLM to follow 36 CFR § 800.2(c)2(ii)(A-F) for Native American participation in this Project. Under § 800.2(c)2(ii), any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking must be consulted.

Under the 2014 BLM-SHPO PA, Section V.F.4.a, "the MOA must be signed by the appropriate parties prior to BLM's issuance of a...ROD for the undertaking" (emphasis with original). Section V.F.4.b requires that draft MOAs should be made available for public comment. According to the Project Final Environmental Impact Statement, an MOA was signed with the Nevada State Historic Preservation Office (SHPO). However, this MOA has not been signed by the appropriate Indian tribes as required by Section V.F.4.a and 36 CFR § 800.2(c)2(ii)(A-F). Nor were drafts of this MOA made available for public comment.

Below are the appropriate Indian tribes described in Section V.F.4.a that BLM was required to include as signatories prior to issuance of the ROD. Tribes that attach religious and cultural significance to historic properties in Thacker Pass likely include the Battle Mountain Band Colony of the Te-Moak Tribe of Western Shoshone, Burns

Paiute Tribe of Oregon, Cedarville Rancheria, Duck Valley Shoshone-Paiute Tribe, Fallon Paiute-Shoshone Tribe, Ft. Bidwell Indian Community, Fort McDermitt Paiute-Shoshone Tribe, Lovelock Paiute Tribe, Pyramid Lake Paiute Tribe, Reno-Sparks Indian Colony, Summit Lake Paiute Tribe, and Winnemucca Indian Colony.

BLM must understand that Thacker Pass is a shared use area by a number of tribes. Just because the federal government has isolated regional tribes and forced them onto reservations relatively distant from Thacker Pass does not mean these regional tribes do not attach religious and cultural significance to the Pass. This is supported by § 800.2(c)(2)(ii) which applies “regardless of the location of the historic property.”

We know that BLM is planning to allow desecration of Peehee mu’huh as early as July 29th. Please respond promptly with your intention to prevent any desecration of Peehee mu’huh until Atsa koodakuh wyh Nuwu and the tribes who attach religious and cultural significance to Peehee mu’huh have had an adequate time to consult with you about mitigating adverse effects to traditional cultural, and historic, properties in Peehee mu’huh. If BLM fails to do so, Atsa koodakuh wyh Nuwu is investigating initiating litigation against BLM.

Sincerely,

Atsa koodakuh wyh Nuwu (The People of Red Mountain):

Inelda Sam
Josephine Dick
Elvida Crutcher
Alva Brown
Alveeta Brown
Dorece Antonio
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cc:

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